PUBLIC PROSECUTOR v. YONG CHEN.

[App. Crim. Juris. (Whitton, J.) May 27, 1952]

[Kuantan — Criminal Appeal No. 2 of 1951]

Opium and Chandu Proclamation, s. 4(i) — Sentence — Inadequacy of — Procedure under Criminal Procedure Code (Cap. 6), s. 173(b).

The accused in this case pleaded guilty in a charge of consuming chandu and was sentenced to 2 weeks' simple imprisonment. The Public Prosecutor appealed against this sentence on the ground that it was inadequate.

Held, that the sentence was inadequate and should be increased to one of 3 months' simple imprisonment.

Observations on a point of procedure — Under section 173(b) of the Criminal Procedure Code, it is the duty of the Police or Customs as the case may be to produce an accused person before the Court within 24 hours of arrest, and it is normally the duty of the Court to have the accused charged and his plea taken as soon as he appears in Court; where it is reasonable that the investigations should take some time to complete and the Prosecution are not in a position to put before the Court at that particular stage a comprehensive statement of the facts which properly affect the assessment of sentence in the event of conviction, it is not only open to a President or Magistrate, but it is his duty, to defer acceptance of an accused's plea of guilty until he has the facts alleged by the Prosecution fully before him, and he should in such circumstances postpone the case to give the Prosecution a reasonable opportunity of completing their enquiries, granting bail to the accused if the case is one in which it seems fitting to do so.

CRIMINAL APPEAL.

Cur. Adv. Vult.

Whitton, J. : — In this case the respondent was convicted on his own plea under section 4(i) of the Opium and Chandu Proclamation of consuming chandu and was sentenced to two weeks' simple imprisonment. The Public Prosecutor appeals against this sentence on the ground that it is inadequate.

In my view when an accused person pleads guilty to, or is proved guilty of, this offence it is the duty of the Court in the first place to consider whether the circumstances are such as to make it desirable for the Court to exercise its power of conditional discharge under section 18A of the Proclamation. Before acting under that section the Court has to be of opinion that the accused is an opium addict. If the Court does not feel the case is one to which section 18A can be appropriately applied it should then proceed to pass sentence under section 4. The penalty for the particular offence to which the respondent pleaded guilty is imprisonment not exceeding one year, and there is no provision for punishment by fine. It seems to me that in the ordinary way a sentence of two weeks is clearly inadequate for this type of offence, because I feel convinced that it can have no appreciable effect as a deterrent. Putting the matter in other words I think the man who is tempted to smoke opium may well be prepared to take the chance if he thinks he will go to gaol for only two weeks should he be caught, whereas if he thinks he will be imprisoned for a considerably longer period his frame of mind with regard to committing the offence will probably be quite different. I emphasise that it is in the ordinary way I regard so short a sentence as being inadequate, as of course there may be exceptional factors in a case which justify a short term. Since there was nothing on the record to suggest there were any exceptional factors in this case, I considered the sentence inadequate and increased it to one of three months' simple imprisonment.

A point of procedure arose in this case to which I wish to refer. The respondent was charged on two counts when he was produced in the Sessions Court and pleaded guilty to both. The Prosecuting Officer then asked the second charge be dealt with later, as there was another man who was to be charged in respect of the transaction. The learned President apparently considered that once a plea of guilty has been recorded under section 173(b) Criminal Procedure Code he was bound to proceed to dispose of the matter finally forthwith. I do not think this is a correct view. It is the duty of the Police or Customs as the case may be to produce an accused person before the Court within twenty-four hours of arrest, and it is normally the duty of the Court to have the accused charged and his plea taken as soon as he appears in Court. There are, however, many cases in which it is quite impossible for the Prosecution to have the full facts of the alleged offence available when the Accused is first produced in Court. This means that the Prosecution are not in a position to put before the Court at that particular stage a comprehensive statement of the facts which might properly affect the assessment of sentence in the event of a conviction. In these circumstances it is, in my opinion, not only open to a President or Magistrate, but I think it is his duty, to defer acceptance of an accused's plea of guilty until he has the facts alleged by the Prosecution fully before him. He should in such circumstances postpone the case to give the Prosecution a reasonable opportunity of completing their enquiries, granting bail to the accused if the case is one in which it seems fitting to do so. The observations I have made are intended, of course, to apply only to those type of cases where it is reasonable that the investigations should take some time to complete. There are many cases so simple in nature that the Prosecution should have all the facts at their finger tips to put before the Court should the accused plead guilty on his first appearance in Court.

Order accordingly.